IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3086 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE COOP SUGAR INDUSTRIES SOCIETY LTD

Versus

VINAYAKBHAI D CHAUHAN

Appearance:

Mr. Satyen Thakkar for M/s. NANAVATI ASSOCIATES for the Petitioner.

MR BS PATEL and Mrs. Ranjan B Patel for the respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 23/10/2001

ORAL JUDGEMENT

Rule. Heard the learned advocates for the parties at length. By means of this petition, the

petitioner has sought for quashing and setting aside the order dated 18.1.2001 below exh.23 passed by the Board of Nominees, Ahmedabad in Lavad case no. 1643 of 1992 and the order dated 10th January, 2001 passed by the Gujarat State Co-operative Tribunal, Ahmedabad in Revision Application no. 66 of 2000.

2. The question for determination which arises in this case is whether the wages of officer or employees fixed by the resolution on the basis of some by-laws by a co-operative society will come within thepurview of section 96 of the Gujarat Co-operative Societies Act, 1961 or not ? The respondent was paid arrears from 1.1.86 to 31st July, 1988 relating to the 4th Pay Commission since the State Government, adopted the pay scale of the Government and paid differences to all its employees. The Union has decided to pay as per the State Pay Scale from 1.1.1996 and has also decided to pay arrears and its employees and officers, but decided not to pay to those who have left the service. Admittedly, in the present case, the respondent has left the service and hence the provisions of the Government resoloution will not be applicable to the persons who are not in service as on 1.4.1991. The respondent filed Lavad suit before the Board of Nominees for difference of pay where the petitioner raised the question that the Board of Nominee has at all no jurisdiction to entertain the suit of the respondent employee. The Board of Nominee dismissed the objection raised by the petitioner and held that the Tribunal has jurisdiction to entertain the suit of the respondent. Against that order, the petitioner preferred a Revision Application before the Co-operative Tribunal. That Revision Application has also been dismissed by the Tribunal holding that the Board of Nominee is competent to entertain the suit proceedings as it is covered under the provisions of section 96 of the Act. It has been held by the Board of Nominee that the status of the plaintiff can be said to be that of an ex employee of the defendant society and therefore, as per the provisions of section 96 of the Act, he is just and proper party and in the suit filed by the plaintiff-respondent, the Board of Nominee has to examine the legality and validity of the implementation of the new pay scale and the resolution passed by the defendant Sangh in the case of the plaintiff and therefore, the nature of the dispute raised is apparently an administrative matter of the Sangh. The Tribunal relying on the decision of the Division Bench in the case reported in AIR 1984, 419, Bombay, wherein it has been held as under:

"We may now summarise our findings briefly as follows:

(1) A claim which is not entertainable by a Civil Court under section 9 of the Civil Procedure Code cannot also be entertained by a Registrar or other authority under section 91 of the Co-operative Societies Act. Such a claim will include a claim by an employee for reinstatement in theservice of his previous employer and/or a claim by an employee for alteration of the conditions of service. Such a claim could only be entertained and decided by the adjudication authorities under the relevant Industrial Law.

(2) Any dispute, therefore, involving such a claim is not one touching the management or the business of a society.

(3) A question such as the payment of wages on account of the termination of theservices by a co-operative society will also not be the subject matter of a dispute touching the "business" of a co-operative society (See para 32 read with para 14(ii) of the judgment of the Supreme Court in Gujarat State Co-operative Bank's case.).

(4) However, a claim based upon contracts between the employees of a co-operative society and the society or claims for damages arising out of breach of such contracts can be part of a dispute touching the "management" of a co-operative society within the meaning of section 91 of the Co-operative Societies Act. Hence such a claim can be entertained and decided by the machinery provided under the Act."

The Tribunal accepted the decision of the Bombay High Court holding that the claim of wages arising out of contract or the conditions or service will be covered under section 96 but not the back wages of reinstatement. Therefore, the question of payment of arrears is related to the regular wages and its difference for the actual services put up by the employee/officer. Therefore, the decision of the Bombay High Court is applicable in the present case.

3. The contention of the learned counsel for the petitioner is that the resolution excluding the persons who are not in service has been passed on the basis of the by-laws. That is in respect of service

conditions of employees who were in in service in past. Whenever any dispute arises between employee and society that there would not be a question in dispute touching the constitution, management or business of the society under section 96 of the Act. He also relied on the judgment of this Court in the case of Panchmahal District Co.Op. Bank Ltd. vs. Jasvantlal Balkrishna Trivedi reported in 1988 (I) GLH, UJ, 19. This is a judgment based on the decision of the Apex Court and the Apex Court has held that any dispute touching the business of the society is limited to the dispute directly relating to the actual trading or commercial activities of the society. That expression did not take in a dispute between the society and its employee relating to the conditions of his employment. The contention of the learned counsel for the petitioner is that the scope of the expression "any dispute touching the business of society is limited to the dispute directly relating to the actual trading and commercial activities of the society. The expression "management" in section 96 of the Act means that the power of directors or board of trustees or managing committee or executive body which has an overall control of the force of the business of the society. But it does not include individual workers or employees of the society who carry on day to day administration of the society. Relying on the decision of the Apex Court, the Court in the case of The Gujarat State Co-operative Land Development Bank Ltd. vs. P.R.Mankad and another reported in AIR 1979, SC,1203, has referred para 15(iv) and (v) of the judgment.

(iv) The scope of the expression "any dispute touching the business of the society, occurring in section 54 of the Act of 1925/or section 96 of the Act of 1961 is limited to disputes directly relating to the actual trading or commercial activities of the society. This expression does not take any a dispute between the society and its employee relating to the conditions of his employment, which will include the termination of his employment. This point is concluded by the decision of this Court in Co-operative Central Bank Ltd. vs. Additional Industrial Tribunal, Hyderabad (1970) 1 SCR 205; (AIR 1970 SC 245), which follows the ratio of its earlier decision in Deccan Merchants Co-operative Bank Ltd. vs. Dalichand Jugraj Jain (1969) 1 SCR 887, (AIR 1962 SC, 1320). In view of these decisions, the ratio of Farkhundali's case (AIR 1962 Bombay, 162) (FB (ibid) decided by the Bombay High Court, is no longer good law.

(v) The expression "management" in section 96 of the Act of 1961, means "the Board of Directors", or "the Board of Trustees", or the "Managing Committee" or "Executive Body" which has the overall control of the affairs and business of the Society and it does not include theindividual workers or employees, individual workmen or employees of the Society who carry on the day to day administration of the society nor will it take in matters touching the service conditions of the servants of the society such as theri appointment to service or their discharge, removal from service and theri wages. A dispute of the kind raised by the second respondent, therefore, will not fall within the purview of the phrase "any dispute touching the management of the society" used in section 96. "

It is also contended by the learned advocate for the petitioner that some resolution has been passed on the basis of the bye-laws of the society and the bye-laws have no binding effect as held in the case of Co-operative Central Bank Ltd. and others vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others reported in AIR 1970, SC, 245. In the said judgment, the Apex Court has observed as under:

"We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by the contract between the parties. In fact, after such bye-laws laying down the

> conditions of service are made and any person enters the employment of a society those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to incorporate under the Companies Act and such Articles of Association have never been held to have the force of law....."

4. On the contrary, the learned counsel for the respondent contended that there are three categories of employees (1) management (2) officer and (3) workmen. The provisions of section 96 of the Act are not attracted to the management and officers though they are applicable to the employees. Hence, any dispute between the society and its employees will not be covered under this Act. He also relied on the decision of the Bombay High Court in this regard.

5. I have considered the contentions of the learned counsel for both the parties. It has been settled by the Supreme Court in the case of The Gujarat State Co-operative Land Development Bank Ltd. vs. P.R.Mankad and another (Supra) that the scope of the expression "any dispute touching the business of the society" is limited to disputes directly relating to the actual trading or commercial activities of the society. The dispute regarding the payment of salaries or difference of salaries does not come within the purview of the expression "dispute touching business of the society". It is also not included in the expression "management" in section 96 of the Act which means the Board of Directors or all board of trustees or managing committee or executive body which has the overall control of the force and business of the society and it does not include the service conditions or wages or salary, pay scale of the individual workers or employees, individual workmen or employees of the society who carry on day to day administration of the society, nor will it take in matters touching the service conditions of the servants of the society. Even if it is assumed that the petitioner was an officer of the society, then also he will come within the meaning of an employee. Hence, the matter touching the service conditions of the servant of the society in respect of appointment to service or their discharge, removal from service and their wages will not be covered. If the proceedings initiated before the Board of Nominees are not covered under section 96 of the

Act, then the preliminary objections raised by the petitioner before the Board of Nominee are justified and the Board of Nominees was required to hold that the dispute does not come within the purview of section 96 of the Act. Thus, the Board of Nominee has committed an error on the face of the record. The order passed by the Tribunal confirming the order of the Board of Nominee is also not sustainable in the eye of law.

6. In the result, this petition deserves to be allowed. Accordingly, this petition is allowed. The impugned order dated 18.1.2001 passed by the Board of Nominee, Ahmedabad and the judgment and order dated 22.1.2001 passed by the Gujarat Co-operative Tribunal, Ahmedabad are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

...

***darji